

(failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); RPC 3.2 (failure to expedite litigation); RPC 8.1(b) (failure to cooperate with disciplinary authorities);¹ RPC 8.4(a) (violation or attempted violation of the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1970 and has no disciplinary history. At the relevant time, he maintained an office for the practice of law in Matawan, New Jersey.

Service of process was proper. On May 18, 2020, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address of record. Respondent signed the receipt for the certified letter but failed to indicate the date received. According to the United States Postal Service

¹ Due to respondent's failure to file an answer to the formal ethics complaint, the DEC amended the complaint to include the RPC 8.1(b) charge.

(USPS) tracking printout, the certified letter was delivered on May 26, 2020. The regular mail was not returned.

On July 17, 2020, the DEC sent a letter to respondent, by certified and regular mail, to his office address, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). Again, respondent signed the receipt for the certified letter but failed to indicate the date received. According to the USPS tracking printout, the certified letter was delivered on July 20, 2020. The regular mail was not returned.

On July 27, 2020, respondent contacted the DEC secretary, via telephone, and claimed that his printer was broken. When the DEC secretary inquired as to whether or not respondent would repair the printer, or gain access to another printer, in order to provide an answer to the complaint, respondent replied that he hoped to submit his answer by July 31, 2020. The DEC secretary stated that the DEC would be anticipating respondent's submission in the mail. The DEC confirmed with the OAE that respondent's address used for service of the

grievance and the complaint was his mailing address of record. After July 27, 2020, respondent failed to further communicate with the DEC.

As of September 4, 2020, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the DEC certified this matter to us as a default.

We now turn to the allegations of the complaint.

The grievant, William Doggett, retained respondent to represent him in a criminal matter arising from his employment with Monmouth County. Respondent represented Doggett competently in that matter, achieving a resolution that included Doggett's acceptance into the pre-trial intervention (PTI) program; his resignation from his county position; his departure from his county employment; and his retention of full retirement benefits. Doggett then retained respondent to represent him in a civil matter to be filed against Monmouth County, seeking supplemental compensation (including unused sick time, vacation time, and overtime) in connection with his retirement. Monmouth County had denied the supplemental compensation, contending that the reason for Doggett's separation from employment was not truly retirement but, rather, was resignation and forfeiture of employment, as memorialized in the June 9, 2008 Consent Order for Forfeiture of Public Office, a condition of Doggett's

entry into the PTI program. Respondent did not charge Doggett any fees in connection with the criminal defense. Rather, he hoped to receive compensation from any recovery made in the civil matter.

Respondent waited to file the civil complaint, asserting that he wanted to avoid any potential impact on the resolution of the criminal matter, including Doggett's retirement and pension. Later, respondent realized that he had failed to file the complaint prior to the expiration of the applicable six-year statute of limitations. Respondent then engaged in multiple communications with Doggett and his daughter, Tonia Doggett (Tonia), in which he falsely claimed that he had timely filed the complaint against Monmouth County.² Respondent even prepared and sent to Doggett a letter, dated March 12, 2019, entitled "Doggett v. County of Monmouth," which purported to inform Doggett of a May 20, 2019 court date before the Honorable Joseph J. Quinn, A.J.S.C.³

On March 20, 2019, Doggett and his wife drove to the courthouse for the bogus court date referenced in respondent's March 12, 2019 letter. Before they exited the car, Doggett called respondent to let him know they had arrived;

² Although the complaint alleged that respondent made misrepresentations to Doggett's daughter, RPC 4.1(a)(1) (false statement of fact or law to a third person) was not charged.

³ The March 12, 2019 letter was not included as part of the record.

respondent replied that he had been “sent home,” and that Doggett should also return home because there was a “two-hour window wait time.” Similar exchanges occurred repeatedly in the ensuing months: Doggett would wait for respondent’s call regarding the court hearing; on the days that respondent would call, he would again maintain that there was a two-hour window; then at the end of the day, he would repeat, “we will see what happens tomorrow.” When Doggett told respondent that he had not received any correspondence with a court date or case number, respondent replied that he was not surprised, claimed that the court and the prosecutors were backed up, and reassured Doggett that he had the number and would “see the case through to the end.”

In June 2019, Tonia went to the Monmouth County courthouse and learned from court staff that the complaint had never been filed and that a hearing before Judge Quinn had never been scheduled. According to Tonia, a court services officer (CSO) called respondent’s office and inquired as to the docket number of the case. Respondent indicated that he did not have the number. The CSO offered to hold, but respondent refused, and said that he would call her back in fifteen minutes. Respondent then returned the call and confessed to the CSO that there was no case and no number.

On June 7, 2019, Tonia went to respondent's office in person. She inquired why he never filed the complaint and lied to Doggett for years. Respondent told Tonia that "it was all part of a cover up." On June 10, 2019, Doggett filed a grievance against respondent.

On October 21, 2019, respondent submitted his response to the grievance. In that response, respondent confirmed the validity of Doggett's allegations in the grievance, and conceded that he had failed to file the complaint against Monmouth County. He admitted, "I was at a loss when this happened as to what to do as it has never happened during my 49 years of practice of law and I was not truthful with Mr. Doggett thereafter." He further acknowledged, "I chose the wrong path." However, he denied refusing to provide a case number to the CSO and attempting to convince Tonia that the record of the case was missing as part of a cover up.

Based on the foregoing facts, the complaint charged respondent with having violated RPC 1.1(a); RPC 1.1(b); RPC 1.3; and RPC 3.2 by failing to file the complaint within the statute of limitations, thereby extinguishing Doggett's opportunity for recovery, and repeatedly misrepresenting to Doggett that the matter was progressing, including drafting the letter which falsely stated that a hearing was scheduled; RPC 1.4(b) and RPC 1.4(c) by failing to communicate

to Doggett that respondent had not filed the complaint, and thereby preventing any opportunity for recovery as a result of the expiration of the statute of limitations; RPC 8.1(b) by failing to file an answer to the complaint; and RPC 8.4(a), RPC 8.4(c), and RPC 8.4(d) by admitting that he acted improperly and knowingly misled Doggett about the status of the case, drafting a document referencing a nonexistent case and hearing, and concealing the fact that the statute of limitations had expired.

We find that the facts recited in the complaint support most of the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Notwithstanding that Rule, each charge in the complaint must be supported by sufficient facts to determine that unethical conduct has occurred.

Specifically, respondent violated RPC 1.1(a) and RPC 1.3 by failing to file the complaint within the applicable statute of limitations, thereby extinguishing Doggett's opportunity for relief. Respondent then repeatedly misrepresented to Doggett that he had filed the complaint and that there were multiple court hearings scheduled. As part of his cover up, he even drafted a document notifying Doggett of a bogus court date.

Next, respondent violated RPC 1.4(b) and (c) by failing to explain to Doggett that (1) respondent had not filed the complaint, despite Doggett's multiple inquiries, and (2) the statute of limitations had expired, negatively impacting any potential recovery. Respondent, thus, failed to explain the matter sufficiently to permit Doggett to make an informed decision regarding the representation. Respondent should have communicated the status of the case and any potential options to Doggett and, optimally, confirmed that advice in writing. In addition, respondent violated RPC 8.1(b) by failing to file a verified answer to the complaint.

Moreover, respondent violated RPC 8.4(c) by verbally misrepresenting the status of the civil matter to Doggett on multiple occasions. As stated, respondent went to great lengths to perpetuate his initial dishonesty, including misrepresenting to Doggett that bogus court hearings were scheduled on multiple dates, and drafting a letter indicating a nonexistent court date. Ignorant of respondent's elaborate deception, Doggett was ready to appear in court each time.

We determine, however, to dismiss the charge that respondent violated RPC 1.1(b). To find a pattern of neglect, at least three instances of neglect, in three distinct client matters, are required. In the Matter of Donald M. Rohan,

DRB 05-062 (June 8, 2005) (slip op. at 12-16). Here, respondent's gross neglect occurred in a single client matter. In addition, we determine to dismiss the RPC 3.2 charge, because that Rule is typically reserved for litigation-specific ethics violations, such as failing to comply with case management orders or discovery deadlines, following the commencement of an action. The charged violations of RPC 1.1(a) and RPC 1.3 adequately address the fact that respondent failed to file the complaint within the statute of limitations and, thus, wholly to prosecute his client's claim.

Similarly, RPC 8.4(a) is inapplicable to the instant facts. That Rule prohibits an attorney from violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another. Here, the RPC 8.4(a) violation appears to be based on respondent's violation of other, more specific RPCs. Thus, it would be superfluous to find a violation here, where no such conditions exist and where we are able to find more specific violations, such as RPC 1.4(c) and RPC 8.4(c). Accordingly, we determine as a matter of policy to dismiss the RPC 8.4(a) charge.

Finally, we determine to dismiss the RPC 8.4(d) charge, because respondent's failure to file the complaint is adequately addressed by the RPC

1.1(a) and RPC 1.3 charges, and the record contains no evidence that respondent's conduct unduly delayed or prejudiced court operations.

In sum, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.4(c); RPC 8.1(b); and RPC 8.4(c). We determine to dismiss the charges that respondent further violated RPC 1.1(b); RPC 3.2; RPC 8.4(a); and RPC 8.4(d). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Generally, misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand still may be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney made a misrepresentation by silence to his client, failing to inform her, despite ample opportunity to do so, that her complaint had been dismissed, a violation of RPC 8.4(c); the complaint was dismissed because the attorney had failed to serve interrogatory answers and ignored court orders compelling service of the answers, violations of RPC 1.1(a), RPC 1.3, and RPC 3.2; the attorney also violated RPC 1.4(b) by his complete failure to reply to his client's requests for information or to otherwise communicate with her; the attorney never informed his client that a motion to compel discovery had been filed, that the court had

entered an order granting the motion, or that the court had dismissed her complaint for failure to serve the interrogatory answers and to comply with the court's order, violations of RPC 1.4(c)); In re Ruffolo, 220 N.J. 353 (2015) (knowing that the complaint had been dismissed, the attorney assured the client that his matter was proceeding apace, and that he should expect a monetary award in the near future; both statements were false, in violation of RPC 8.4(c); the attorney also exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, not working on it after filing the initial claim, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter, violations of RPC 1.1(a) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates); and In re Falkenstein, 220 N.J. 110 (2014) (attorney led the client to believe that he had filed an appeal and concocted false stories to support his lies, a violation of RPC 8.4(c); he did so to conceal his failure to comply with his client's request that he seek post-judgment relief, violations of RPC 1.1(a) and RPC 1.3; because he did not believe the appeal had merit, the attorney's failure to withdraw from the case was a violation of RPC 1.16(b)(4); the attorney also practiced law while ineligible, although not knowingly, a violation of RPC 5.5(a)).

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, the presence of additional violations, and the seriousness of the attorney's disciplinary history. See, e.g., In the Matter of Esther Maria Alvarez, DRB 19-190 (September 20, 2019) (admonition for attorney who was retained to obtain a divorce for her client, but for the next nine months, failed to take any steps to pursue the matter, and failed to reply to all but one of the client's requests for information about the status of her case, violations of RPC 1.1(a) and RPC 1.4(b)); in another matter, the attorney agreed to seek a default judgment, but waited more than eighteen months to file the necessary papers with the court; although the attorney obtained a default judgment, the court later vacated it due to the passage of time, which precluded a determination on the merits, violations of RPC 1.1(a) and RPC 1.3); In the Matter of Michael J. Pocchio, DRB 18-192 (October 1, 2018) (admonition for attorney who filed a divorce complaint and permitted it to be dismissed for failure to prosecute the action; he also failed to seek reinstatement of the complaint and failed to communicate with the client; violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 3.2); In re Burro, 235 N.J. 413 (2018) (reprimand

for attorney who grossly neglected and lacked diligence in an estate matter for ten years and failed to file New Jersey Inheritance Tax returns, resulting in \$40,000 in accrued interest and a lien on property belonging to the executrix, in violation of RPC 1.1(a) and RPC 1.3; the attorney also failed to keep the client reasonably informed about events in the case (RPC 1.4(b)); return the client file upon termination of the representation (RPC 1.16(d)); and cooperate with the ethics investigation (RPC 8.1(b)); in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand; in mitigation, the attorney suffered a stroke that forced him to cease practicing law and expressed his remorse); and In re Abasolo, 235 N.J. 326 (2018) (reprimand for attorney who grossly neglected and lacked diligence in a slip-and-fall case for two years after filing the complaint; after successfully restoring the matter to the active trial list, the attorney failed to pay a \$300 filing fee, permitting the defendants' order of dismissal with prejudice to stand, in violation of RPC 1.1(a) and RPC 1.3; in addition, for four years, the attorney failed to keep the client reasonably informed about the status of the case, in violation of RPC 1.4(b)).

Likewise, admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney

failed to reply to repeated requests for information from the district ethics committee investigator regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)); In re Gleason, 220 N.J. 350 (2015) (attorney did not file an answer to the formal ethics complaint and ignored the district ethics committee investigator's multiple attempts to obtain a copy of his client's file, a violation of RPC 8.1(b)); the attorney also failed to inform his client that a planning board had dismissed his land use application, a violation of RPC 1.4(b)); and In the Matter of Raymond A. Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written, formal reply to the grievance and a copy of the filed pleadings in the underlying case, despite repeated assurances that he would do so, a violation of RPC 8.1(b)).

Based on disciplinary precedent, a reprimand is justified solely for respondent's violation of RPC 8.4(c). To craft the appropriate discipline, however, we must consider respondent's further violations of RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.4(c); and RPC 8.1(b), and aggravating and mitigating factors.

In aggravation, the harm to Doggett was significant, because respondent's failure to take affirmative steps to pursue the litigation extinguished Doggett's opportunity for relief. Moreover, rather than admitting his failure to file the

complaint within the statute of limitations, the lengths to which respondent went to conceal his mistake were outrageous, comprised of prolonged and elaborate misrepresentations to Doggett. Rather than admit his failures, respondent allowed Doggett to languish for months, and even drafted a letter indicating a fictional court hearing. By behaving so deceitfully, respondent ensured that the cover up was worse than the crime. These aggravating factors plus respondent's additional RPC violations warrant the enhancement of the discipline to a censure.

In further aggravation, we must consider the default status of this matter. “[A] respondent’s default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced.” In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted). Respondent’s default, thus, warrants further enhancement of the discipline to a three-month suspension.

In mitigation, respondent has no disciplinary history in fifty years at the bar. Moreover, upon Doggett’s filing of the grievance, respondent readily admitted his misconduct. On balance, we find the aggravating and mitigating factors to be in equipoise and determine that a three-month suspension is the

appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Member Joseph voted to impose a three-month suspension and further determined that respondent violated RPC 8.4(d), given Doggett's need to involve the court in the outcome of his matter.

Chair Clark and Members Boyer and Singer voted to impose a censure.

Member Zmirich abstained.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bruce W. Clark, Chair

By: 

Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Frederick J. Kalma
Docket No. DRB 20-267

Decided: June 29, 2021

Disposition: Three-month suspension

<i>Members</i>	Three-month suspension	Censure	Abstained
Clark		X	
Gallipoli	X		
Boyer		X	
Hoberman	X		
Joseph	X		
Petrou	X		
Rivera	X		
Singer		X	
Zmirich			X
Total:	5	3	1



Johanna Barba Jones
Chief Counsel